

THOMAS D. HARRISON

IBLA 96-76

Decided July 29, 1999

Appeal from a decision of the Deputy State Director, Utah State Office, Bureau of Land Management, denying sundry notice request for a change of well operator. SDR 95-8.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases:
Royalties

A BLM decision returning unapproved a sundry notice in which a party requests approval as operator of a well will be affirmed when ownership of the lease is equally held, the decision is within the discretion of the authorized officer and accords with the public interest, and the appellant fails to demonstrate error in that decision.

APPEARANCES: Thomas D. Harrison, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Thomas D. Harrison has appealed from an October 17, 1995, decision of the Deputy State Director, Mineral Resources, Utah State Office, Bureau of Land Management (BLM), affirming the Moab Associate District Manager's (ADM's) August 31, 1995, decision returning unapproved Harrison's August 21, 1995, sundry notice request to change the operator of the Horse Point No. 2 Well from the National Fuel Corporation (National) to Harrison. The well is located on Lease UTU-05084 in sec. 11, T. 16. N., R. 23 E., Salt Lake Baseline & Meridian, Grand County, Utah.

The record indicates that the operatorship of the well has been a source of contention between Harrison and Ampolex (Texas), Inc., and more recently, between Harrison and J.C. Thompson, president of National. In an October 12, 1994, order, the ADM, Moab District, approved Harrison's sundry notice request to become operator of the well. The ADM stated in that order:

There seems to be an ongoing dispute between you and Ampolex (USA), Inc. as to who should operate the well. The [BLM] will recognize, as operator, any qualified entity who properly applies and can verify bond adequacy. You are currently recognized as operator. We suggest you coordinate with Ampolex and come to an

agreement on who will operate the well. This nonsense of changing operatorship on a weekly basis is not hastening the well's return to production.

As this well has remained idle for nearly a decade, we believe that a well test is in order. Within 30 days of receipt of this request, submit a proposal to conduct a production test on the Horse Point No. 2 Well. Failure to follow this written order will result in appropriate enforcement action being taken.

Effective November 1, 1994, National purchased Ampolex's interest in the well. By sundry notice filed November 25, 1994, J.C. Thompson, president of National, requested approval as operator of the well. On January 23, 1995, BLM returned Thompson's sundry notice unapproved, stating that a more recent request, filed by Harrison, had been approved, and that Harrison had "proposed to test the well this spring."

On January 26, 1995, Thompson submitted another request to become operator of the well. In his cover letter, he impugned Harrison's reporting record on an adjacent well. On February 1, 1995, the ADM approved Thompson as operator of the well.

In a February 27, 1995, decision denying a request by Harrison to assume operatorship of the well, the ADM stated:

Historically, as operator of this and other wells, you have established a very poor record of complying with production reporting requirements. Our files contain six "Notices of Noncompliance--Failure to Report Production" issued to you by Minerals Management Service (MMS) for this reason alone. The most recent of which, issued February 15, 1995, is for a 17 month period of non-reporting from September 1993 through present.

On March 20, 1995, Harrison sought State Director review of that decision. In an April 7, 1997, decision, the Deputy State Director reversed the February 27, 1995, decision, stating:

Lease UTU-05084 has two Lessees of Record Title (LORT) with no severed operating rights, Harrison and National Fuel Corp.[,] each having 50 percent. Both Harrison and Thompson have \$25,000 bonds. We recognize the one party as operator who has interest in the lease. Therefore, Thomas Harrison is recognized as the operator of record and is liable for all operations conducted on Horse Point Number 2 well. Operations will be covered by Harrison's bond UT-0295.

Thereafter, on April 25, 1995, Thompson again applied for operatorship. On June 12, 1995, the ADM approved Thompson as operator. As a condition of approval, BLM specified that a well test was to be performed before August 31, 1995.

On August 21, 1995, Harrison filed a sundry notice requesting that he be approved as the operator of the well. In his August 31, 1995, decision,

the ADM noted that while Harrison owned 50 percent record title, National also owned 50 percent and had shown a good faith effort by preparing the well for the required production test, which Harrison, during his tenure as operator, had not done. The ADM ruled:

National Fuel Corporation has been properly recognized as the operator of the subject well, and they clearly wish to remain operator. We have no reason to believe that they have not, or will not operate the well in the best interest of the public. Considering the history of this well, we do not feel that changing operatorship at this time would hasten production or in any other way benefit the lease. Therefore, your request to assume operatorship of the Horse Point No. 2 Well is being returned to you without approval.

In the decision here being appealed, the Deputy State Director stated:

At the time of our April 7, 1995 decision, Harrison and National were both lessees; however, because Thompson [chose] to operate as an individual rather than under the lessee['s] corporate name, our decision was to recognize a lessee operating as itself. On April 20, 1995, National proposed to operate the well under corporate name and provide bond coverage utilizing surety consent from Thomson's bonding company. National was recognized by the Moab ADM on June 12, 1995.

Further, the Deputy State Director observed that National had conducted a well test, obtained a right-of-way for a gas pipeline, and, at the time of the decision, was proceeding with construction of the pipeline to place the well in production. The Deputy State Director noted that Harrison had conducted no such activities while he was recognized as the operator. He found that National as operator was in the best interest of the Government because National had demonstrated an effort to get the well in production.

In his statement of reasons Harrison alleges that National's "unchoked blowing of the well" had damaged the well, caused environmental damage, loss of revenue, and prompted him to seek BLM's help in wresting control of the well away from National. Harrison asserts that BLM was deaf to his requests. Harrison asserts that he himself had assembled the necessary equipment and was, in fact, ready to test the well and place it in production at safe, gradually increasing flow rates.

Harrison asserts that when he visited the well site on November 9, 1995, he found that the well was producing gas at too high a rate with the likelihood of damage to producing formations.

Reviewing the history of the changes in operator designation for the well, Harrison alleges that he was unfairly treated during his tenures. He states that unlike himself, the other operators, Ampolex and National, were never required to flow test the well as a condition of approval of their operator designation. Harrison asserts that BLM failed to respond to his May 18, 1995, request for a temporary postponement of well testing, his September 27, 1995, notification of damage to the Dakota Sandstone, or to

his October 18, 1995, emergency well seizure request. Harrison asserts that BLM's conduct discriminated against him as a small operator.

The record includes a sundry notice filed November 8, 1995, by National, stating that pipeline hookup had been completed and the well was ready for production. BLM accepted this notice on November 20, 1995. This acceptance indicates that BLM was not concerned by the potential for damage which Harrison alleged in his communications to BLM.

[1] If an appellant fails to show error in the appealed decision, the decision will be affirmed. Lone Mountain Production Co., 139 IBLA 244, 250 (1997); Charles S. Stoll, 137 IBLA 116, 126 (1996). We find that the reasons given by BLM for not approving Harrison's sundry notice of August 21, 1995, are valid and supported by the record. Harrison's tenures as operator do not demonstrate that he made diligent efforts to test the well and place it in production. On the other hand, while National served as operator it achieved these objectives. It is the authorized officer's responsibility "to approve, inspect and regulate" onshore oil and gas operations with a view to "maximum ultimate recovery of oil and gas * * *."

43 C.F.R. ' 3161.2. When, as here, ownership of the lease is equally held, BLM has discretion to choose an operator that it deems best able to conduct operations in conformance with this policy. 1/

Harrison's allegations about National's blowing of the well, environmental damage and loss of revenue are uncorroborated, and his complaints of unfair treatment by BLM are belied by the record. As that record shows, BLM several times approved Harrison as operator; however, Harrison failed to diligently perform the required work. Harrison has demonstrated no error in BLM's decision returning his sundry notice unapproved.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. ' 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge

1/ These circumstances differ from those in our recent decision in Holcomb Oil and Gas, Inc., 149 IBLA 226 (1999). In that case we affirmed replacement of a unit operator by a majority of the working interest owners, in accordance with the provisions of the unit agreement.